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RUCPDOG/USDOC WASHDC

UNCLAS SECTION 01 OF 09 BRASILIA 000254

SIPDIS

SENSITIVE
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DEPT FOR EB/TPP/IPE JENNIFER BOGER
DEPT PASS USTR FOR KATHERINE DUCKWORTH AND JENNIFER CHOE GROVES
DEPT PASS USPTO
USDOC FOR ITA/MAC/OIPR CASSIE PETERS
USDOC FOR ITA/MAC/WH/OLAC/MCAMPOS

E.O. 12958: N/A
TAGS: [KIPR](#) [ETRD](#) [ECON](#) [BR](#)
SUBJECT: BRAZIL: 2008 Special 301 Recommendation

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Brasilia 2813; K) 06 Brasilia 367

¶1. (U) Per reftel A, the following is Embassy Brasilia's input for
the 2008 Special 301 Review of Brazil.

¶2. (SBU) Summary: Post recommends that Brazil remain on the Special
301 Watch List based on the GoB's ongoing commitment to a strong
overall anti-piracy enforcement regime and its determined actions to
improve patent and trademark processing. However, Post feels that
the GOB's need to undertake a more vigorous effort to address
photocopying of copyrighted material by campus copy shops, address
issues involving data protection, and adequately police secondary
smuggling routes into the country preclude any upgrade of the
country's status at this time. End Summary.

OVERVIEW

¶3. (SBU) The GoB has continued its emphasis on copyright
enforcement activities. This effort has yielded substantial
increases in some confiscation statistics as well as in detected and
penalized violations, though a drop in a few enforcement-related
statistics are attributed to modifications in smuggling patterns.
Internet piracy issues appear to be slowly gaining attention in some
areas of the GoB with some modest enforcement success. Illegal book
copying on college campuses remains a problem without an easy
solution. Constitutional rights to information and education are in
direct conflict with the rights of copyright holders. The prospects
for legislation to clarify the rights of copyright holders of
educational materials appears unlikely in the short-term.

¶4. (SBU) The Brazilian patent and trademark office is taking
concrete steps to address Brazil's high patent and trademark
backlogs with demonstrable results. In the agricultural biotech
field, the process for approval of commercial licensing of
genetically modified organisms and their derivatives was streamlined
in 2007, but efforts for new product approval were frustrated by
legal intervention on behalf of some NGOs.

¶5. (SBU) In the pharmaceutical area, lengthy delays in approval by
Brazil's National Health Vigilance Agency (ANVISA - the Brazilian
FDA equivalent), and data protection remain concerns. Post has
become aware of several cases where marketing approval was granted

(although the products have not yet entered the market) to generic drug manufacturers apparently based on information submitted in connection with approval of the original drug. The GoB asserts that its compulsory licensing action in May 2007 was price-driven and contends that the drug's patent was already in the public domain when the patent was issued, since it was a "pipeline patent" (ref G). Post is not aware at this time of any imminent additional compulsory licensing actions by the GoB.

16. (SBU) Draft criminal IP legislation, which would enable enhanced enforcement efforts, is currently stalled in the president's office for review. In August 2007, additional legislation was introduced to increase the penalties for trademark violations. Brazil's plans to join the Madrid Protocol are still under consideration.

17. (SBU) While the GoB continues to emphasize enforcement as its primary means to combat piracy, it also appears committed to ongoing educational and training efforts, often in conjunction with industry organizations and often targeting children and young adults.

Enforcement Efforts

18. (SBU) In a report to the National Council to Combat Piracy (CNCPI), Receita Federal (the GoB customs and internal revenue service) registered contraband seizures in 2007 totaling over 1.05 billion Brazilian Reals (approximately USD 601.55 million), claiming a 21 percent increase over 2006. Receita noted a 72 percent rise in its anti-contraband operations over the previous year (to 2,269 in 2007), which resulted in 6,881 federal charges. (Note: The report did not segment out piracy-related charges from other charges. End Note.) Receita noted a 252 percent increase in seizures of recorded

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media (CDs and DVDs), shoes, watches and sunglasses. The agency cited the PRC as the main country of origin of confiscated contraband items, followed by the U.S., India and Paraguay. (Note: The Receita report listed the origin of 57.9 percent of the items seized as "Other, including unknown origin"; 25.41 percent from the PRC; 4.17 percent as originating in Brazil; 3.28 percent from the U.S.; 2.06 percent from India; and, 1.94 percent from Paraguay. End Note.)

19. (SBU) For 2007, Rodoviaria Federal (the Federal Highway Patrol) reported a 22.78 percent decrease in confiscations of pirated media from the previous year (approx 5.8 million units confiscated versus 7.5 million in 2006) and a 4.85 percent decrease in seizures of illegal computer products (from approx 129 thousand in 2006 to around 123 thousand in 2007). Rodoviaria reported a 22.25 percent increase in apprehensions of contraband electronics items (from about 273 thousand in 2006 to over 334 thousand in 2007) and a 3.96 percent increase in seizures of contraband medicines (approx 323 thousand units versus around 310 thousand in 2006). Rodoviaria claimed that the drop in confiscations was due to an increase in the use of secondary roads by smugglers where Rodoviaria has less presence (ref G).

110. (SBU) The third major enforcement agency, the Brazilian Federal Police, reported 8,698 piracy investigations in 2007, a 25.51 percent increase over 2006 (6,930 investigations reported). The Federal Police have not provided 2007 seizure information to Post. (Note: CNCPI officials recently told EconOff that release of the annual report containing consolidated federal agency enforcement statistics will be delayed this year until June - it was released in January last year - to incorporate new policy changes and to consolidate data collection. This report has contained Federal Police contraband seizure information in the past. End Note.)

111. (SBU) In 2007, Ministry of Agriculture Department of Intellectual Property and Agriculture Technology (MAPA) data indicates that 373 out of 3,157 inspections of soybean seed lots, resulted in fines to the owners. Out of 606 cotton and corn inspections (an 18.8 percent increase over 2006), 36 (verses 55 in 2006) were found to be questionable and resulted in average fines of \$R 250 thousand (USD 142 thousand) (ref G).

-- Counterfeit Medicine

¶12. (SBU) According ANVISA counterfeit medicines remain problematic, although to a lesser extent than in the past. In 1997-98, there were 172 reported cases of counterfeit medicines; while in 2006-07, there were only 17. Penalties for drug counterfeiters are stiff: 10-15 years without parole or amnesty plus a fine. GoB regulations now call for usage of secure drug packaging and a distributors' registry. ANVISA serves as the clearinghouse for information on counterfeit drugs provided by a nationwide notification network of 160 sentinel hospitals (known as Notivisa), and state health vigilance units (VISAs) (ref G).

-- Raids on Known Markets

¶13. (SBU) State and federal enforcement authorities continued action against known marketplaces of counterfeit goods. CNCP data indicates that federal and state enforcement officials seized 1,472,528 contraband items in raids on known marketplaces through September 2007. Among these actions are year-long operations targeting buses crossing into Brazil in the Tri-Border area (538,038 seizures as of August 31) and ongoing actions against street vendors and shops in some of the more notorious counterfeit markets in Sao Paulo and Rio de Janeiro, including the Stand Center, Galeria Page and various Camelodromos (Ref E). In a November enforcement operation, Federal Police in Brasilia conducted operation "Seven Errors" against contraband items in the "Paraguay Fair," a known market for counterfeit goods. The operation resulted in 18 arrests.

Another November anti-contraband operation in Mato Grosso do Sul targeted among other items, agrochemicals, tires and electronics, and resulted in 70 arrests. In Sao Paulo, state, federal and municipal authorities raided the city's notorious "25th of May" Street on Dec. 11, and the "Stand Center" and "Promo Center" on Dec. ¶19. Both the Stand Center and Promo Center remained closed during the Christmas holiday season. On January 11, 2008, Federal Highway police reported the seizure of over half-million blank CDs and DVDs in the state of Rio Grande de Sul hidden in wooden crates. (Note: Updated information on raids of notorious marketplaces and other

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enforcement actions will most likely be included in the 2007 CNCP report due to be released later in the year. End Note.)

-- Border Crossings

¶14. (SBU) Brazil's customs office at the Amistad Bridge crossing into Brazil has forced many smugglers to use alternative routes, such as through the state of Mato Grosso do Sul. There are also indications that smugglers are using Mercosul transportation rules to bring pirated goods across Argentina into Brazil through Uruguay (ref E). The President of a leading IP organization recently told EconOff that this problem is ongoing and that many of the border stations at secondary crossings, including some of those on the border with Uruguay, are unmanned from 6:00PM until 7:00AM. (Note: An April 30, 2007 media report claimed that traffic from Peru was able to enter the Brazilian state of Acre without inspection by GoB authorities. Due to the remote nature of this location, Post has not yet been able to obtain independent confirmation of this claim or determine if the report referred to a situation that has since been resolved. End Note.)

-- Arrests and Convictions

¶15. (SBU) Citing difficulties in consolidating various state and federal databases, GoB interlocutors have thus far been unable to provide arrest and conviction statistics for piracy and contraband activities to Post. Information provided by the Federal Police on raids in 2007 indicates around 339 arrests as a result of these operations, but piracy charges were not segmented out from other charges such as income tax evasion. (Note: Post's 2006 Special 301 report indicates the GoB reported only 14 convictions for piracy related crimes in 2005 (ref K). End Note.)

Internet Piracy

¶16. (SBU) Opinions within the GoB are mixed as to the extent and importance of Brazilian efforts against internet piracy. In a January meeting, GoB officials voiced seemingly conflicting views. A CNCP official said that although CNCP did not view internet crime in Brazil as a top priority due to low internet penetration rates in the country (just 14.5 % according to some estimates), CNCP has created a cyber-crime division. A MRE official (MRE is a member of CNCP) stated that CNCP will address internet piracy once its members raise the issue, which he said they have not done thus far. Another MRE official added that Brazil's low number of computers does not mean that the country is not concerned with internet crime and pointed to GoB attention to the issue at the Internet Governance Forum (IGF) Meeting in Rio de Janeiro in November 2007 (reftel E).

¶17. (SBU) Meanwhile, there is some evidence of efforts underway in this area. Vice Minister of Justice Luiz Paulo Barreto assured recording industry representatives in April that he would drop his public opposition to legal actions filed by them against Brazilian end-users of pirated music (reftel B). CNCP data indicates that, through September 2007, Brazilian authorities had removed 19,878 internet advertisements touting pirated items, removed 3,882 companies from the internet and shut down 183 web sites - all for violation of Brazil's anti-piracy statutes. The Brazilian Federal Police have begun efforts to fight internet piracy, including modernization of outdated equipment and training of a cyber crime unit, and have indicated interest in exchanging technology and information with other countries (ref E).

GoB Education and Training Programs

¶18. (SBU) While the GoB continues to emphasize enforcement as its primary means to combat piracy, it also appears committed to ongoing educational and training efforts, many of which target young adults and children. In 2007, CNCP supported the American Chamber of Commerce's elementary school program, "Combating Piracy is Learned at School." CNCP partnered with the U.S. Chamber to support the Chamber's ongoing "Citizenship Game" that targets youths and university students. A component of this program teaches students the importance of protecting intellectual property rights in the context of social responsibility and gives them the opportunity to present their ideas on how to address IP infringement in Brazil.

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The Program launched a website, (www.atitudeoriginal.com.br) in June. CNCP continues to promote the SINDIRECITA (Union of Receita Employees) program "Pirate, I'm out. I only use the Original," focused on college students, and has provided training to the Brazilian office of Consumer Protection (PROCONS) and interns at the Secretariat of Economic Development (SDE). CNCP also assists with

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the Federation of Industries of Rio De Janiero (FIRJAN) "Authentics" campaign to educate high school students.

¶19. (SBU) Through its internal training division, ANVISA has instructed 130 state and municipal level inspectors on conducting counterfeit medicine inspections (as of June 2007). ANVISA, in conjunction with Receita, has also participated in seminars on counterfeit medicines conducted by the private industry group National Anti-Piracy Forum (FNCP) and Public Ministries in states throughout Brazil. The agency recently announced plans to expand its training for enforcement officials to include judges, who the organization feels do not take adjudications for counterfeiting medicine seriously enough (ref G). In 2007, the National Institute of Industrial Property (INPI - the Brazilian patent and trademark office) held 28 courses on technology management and patent drafting at Brazilian universities and research institutes (in 2008, 59 such courses are planned) and conducted eight courses for GoB officials.

USG and Industry Provided Training

¶20. (SBU) State governments and GoB agencies have been receptive to USG funded and organized training. In 2007, the U.S. Patent and Trademark Office (USPTO) provided training to more than 70 Brazilian patent and trademark examiners via DVCs and participation in its Virginia-based Global Intellectual Property Academy (GIPA). In May, the American Chamber of Commerce in Sao Paulo coordinated with the Sao Paulo State Secretariat of Public Safety, to conduct a USTDA-funded training seminar for Sao Paulo police and prosecutors. CNCP Executive Secretary, Andre Barcellos, attended a June session of the USPTO Global Intellectual Property Academy (GIPA) in Virginia. In July, DHS/ICE coordinated an IP enforcement training program at the International Law Enforcement Academy in Lima, Peru, which included participation of an official of the state of Bahia's newly formed anti-piracy committee (GEPPI), as well as officials from the anti-piracy unit in Rio de Janeiro. In December, Consulate Recife coordinated with the state government of Pernambuco and the industry association National Forum Against Piracy (FNCP) to hold an INL funded training seminar targeting enforcement officials, prosecutors and judges. In that same month, the Rio Grande do Sul Civil Police hosted an FBI sponsored training seminar for 60 federal, civil and military police officials as well as prosecutors and judges that included training in IPR enforcement. GoB officials have also reached out recently to the USG for technical assistance. At a January 2008 meeting with EmbOffs, Ministry of Agriculture officials expressed an active interest in USG help with patent protection and in streamlining the patent process for agricultural products.

¶21. (SBU) Brazilian private industry organizations have also conducted extensive IPR training programs. In 2007, over 2000 police officials and prosecutors participated in seminars conducted throughout the country by FNCP, which the organization plans to expand to different locales in 2008. The Federation of Industries of State of Sao Paulo (FIESP) partnered with the U.S. Chamber of Commerce to conduct 16 training seminars for Brazilian customs officials in airports, ports and border customs posts. The U.S. Chamber joined with the Brazilian Textile and Apparel Industry Association (ABIT) to conduct a half-day program for the Association of Federal Judges of Brazil (AJUFE) on the impact of piracy on Brazil. In 2008, the U.S. Chamber plans an additional 12 training programs at various ports and border crossings.

Anti-Piracy Committees and State Efforts

¶22. (SBU) In April, the film and music industries merged their enforcement efforts and created the Association Anti-Piracy Cinema and Music (APCM) (ref B). The state of Bahia formed a specialized police unit to combat piracy and counterfeiting (GEPPI) in May. Bahia's state program joins existing programs in the Brazilian

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states of Sao Paulo, Rio de Janeiro, Rio Grande do Sul, and Minas Gerais.

¶23. (SBU) Shortly after assuming office in 2007, the governor of Pernambuco, Eduardo Campos, publicly directed his state police force to cooperate with Federal Police in enforcing IPR statutes. In September, the city of Blumenau in Santa Catarina state launched the "Municipal Council to Combat Piracy" in conjunction with the announcement of a State and Municipal Department of Education (APCM) coordinated program, "City without Piracy." APCM envisions replicating the Blumenau program in other states and in 2008, already has plans to expand this program to the city of Uberlandia in Minas Gerais.

Campus Copy-Shops

¶24. (SBU) According to the Brazilian Association for Reprographic Rights (ABDR), internal rules issued by University of Sao Paulo (USP) and the Pontifical Catholic University of Rio de Janeiro (PUC)

allow books not written in Portuguese to be freely copied, if unavailable for sale at campus book stores. ABDR claims that the university justifies its internal rule by stating that access to knowledge and education are fundamentally protected under the Brazilian constitution. (Comment: Under Brazilian copyright law, "the one-time reproduction of small passages of a work for the copier's private use without the intention of making a profit" is allowed, but the Law does not define what constitutes a "small passage." End Comment.) In an October discussion with EmbOff, an ABDR representative characterized the book piracy situation in Brazil as "critical." He claimed that GoB authorities, in particular the Ministry of Education, have not placed a high priority on this issue and that progress in this area is lagging in comparison to software and music piracy (ref E).

¶25. (SBU) At a January meeting, an official at the Ministry of Culture (MoC) said actual book piracy was rare in Brazil, but non-authorized copying of copyrighted works was common on university and college campuses. He said the GoB supports the right of individuals to access information and knowledge, which is often difficult due to the high cost of textbooks, despite their tax exempt status, as a result of low production runs. He asserted that legal action by book publishers against professors and schools over illegal copying in 2006-2007 led to a public backlash against IP laws (ref G).

¶26. (SBU) According to the MoC official, individual universities use in-house rules to police the amount of a publication that can be copied (ranging from 10 - 40 percent) or limit copies to numbers of chapters. He relayed that the MoC plans a forum this year to obtain public input as it considers copyright law reforms. Some of the ideas being considered by the MoC to provide remuneration to authors are a collective management system or a tax on blank media and reproductive machines. The MoC is also considering a system to allow small segments of books to be sold over the internet (ref G).

Patents, Trademarks and Data Protection

- Patents and Trademarks

¶27. (SBU) The National Institute of Industrial Property (INPI - the Brazilian patent and trademark office), continues to have a substantial backlog in pending patent and trademark applications. INPI has taken concrete steps to improve its processing of patents and trademarks, including an ongoing upgrade of its outdated data processing systems. The GoB budgeted USD 100 million for INPI operations in 2008 and 2009 (it was USD 40 million in 2004).

¶28. (SBU) The patent backlog is estimated at between 130,000 and 150,000 applications. In 2007, INPI received 24,081 patent applications, and issued 17,333 final decisions (1,855 granted patents; 824 denied; 14,611 withdrawn). In 2008, INPI plans to introduce an electronic patent application filing system and establish four "Control Divisions" to monitor quality and processing issues. Over the past two years, INPI has increased the number of patent and trademark examiners approximately 200% and has plans to further increase patent examiners from the current level of 255

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full-time examiners to 360 full-time examiners by the end of 2008 and has increased median salaries 50% to retain experienced employees. (INPI currently employees 110 trademark examiners and has not announced plans to hire more.) New patent examiners go through a two-year formal on-the-job training program that covers patent law and examination (including major national and international legislation and jurisprudence). With this new staffing, INPI expects to increase its patent processing capacity from the current 20,000 applications/year to 30,000/year by the end of 2008. By 2009, INPI expects new patent applications to be decided within four years, which would represent the end of the backlog.

¶29. (SBU) The trademark backlog is estimated at approximately 470,000 applications. In 2007, INPI brought on-line a new

electronic trademark filing system (e-Marcas) to streamline adjudications. The agency estimates that 107,446 trademark applications were filed in 2007 (59,582 paper; 47,864 e-Marcas) and it issued 296,258 final decisions (128,540 granted trademarks; 111,190 withdrawn; 24,744 denied). According to INPI, new trademark applications are now being initially processed within a maximum of 12 months.

¶30. (SBU) In 2006, Brazil announced plans to join the Madrid Agreement Concerning the International Registration of Marks ("Madrid Protocol"), but the executive branch has yet to submit this proposal to the Brazilian Congress for approval. Should this plan be realized, Brazil would become the first country in South America where this system is available. At its 2007 General Assembly meeting, WIPO appointed INPI an International Searching Authority (ISA) and International Preliminary Examining Authority (IPEA) under the Patent Cooperation Treaty (PCT) for international patent applications.

¶31. (SBU) Law 10196 (2001) includes a requirement that National Health Vigilance Agency (ANVISA) approval be obtained prior to the issuance of a pharmaceutical patent, raising transparency concerns, and possible conflicts with Article 27 of the TRIPS agreement. U.S. companies have complained of lengthy delays in getting the AVISA approval required before pharmaceuticals can receive final approval by INPI. ANVISA claims that its reviews take no more than 120 days with only a three percent rejection rate (ref E). Medical device manufacturers continue to voice concerns over a 2006 ANVISA regulation requiring disclosure of data prior to approval of medical devices that they believe to be overly burdensome and threatens to infringe on the companies' proprietary financial information.

-- One Roadblock to Agricultural-Biotech Product Approvals Removed

¶32. (SBU) In March 2007, law 11460 changed the requirement for approval of commercial licensing of genetically modified organisms (GMOs) and GMO derivatives by Brazil's 27 member National Technical Commission of Biosafety (CTNBio) Board from a two-thirds majority to an absolute majority, theoretically removing an impediment to commercial licensing of GMOs and GMO derivatives, since the board is heavily influenced by environmentalists and anti-biotech groups. Since then, at least three commercial biotech applications (GMO corn) have been approved, but anti-biotech groups have blocked their release through a federal court injunction.

-- Data Protection

¶33. (SBU) In contrast to previous reports, Post has become aware of several cases where ANVISA granted marketing approval to generic drug manufacturers based on undisclosed test results and other confidential data submitted in connection with approval of the

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original drug on which the generic is based, raising concerns of consistency with TRIPS Article 39.3. However, in these cases, the generic product has not entered the market following such approval, possibly because patent rights are still in force for the original product upon whose test data the generic had relied. ANVISA has taken the position that reliance on the previously granted marketing approval is not a violation of Brazil's unfair competition laws or its international obligations.

¶34. (SBU) Brazil's Industrial Property Law (9279/1996; Art. 195, XIV) provides for civil and criminal penalties for "anyone who...divulges, exploits, or utilizes, without authorization, results of tests or other undisclosed data whose preparation involves considerable effort and that were submitted to government

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agencies as a condition for obtaining approval to commercialize products." However, this provision also provides an exception whereby disclosure by government agency is permitted "when necessary to protect the public." Law 10603/2002 mandates the protection of test data for veterinary pharmaceuticals and agrochemicals for 2-5 years (depending on whether it is a new or known chemical entity). This law does not cover pharmaceuticals for human use. According to

Article 7 of this law, if the product is not commercialized within two years of the date of sanitary registration, third parties may request use of the data for registration purposes.

-- Compulsory Licensing

135. (SBU) Invoking TRIPS provisions, on May 4 Brazil issued a compulsory license for Merck Sharp & Dohme's anti-retroviral drug efavirenz (brand name: Stocrin), used in treating HIV/AIDS, after a breakdown in negotiations with the company. The Brazilian government cited the reason as a need for cost savings in its free public treatment program for HIV victims. A GoB official stated to EmbOffs at a January meeting that the drug's patent was one of over 400 pipeline patents, and, thus, was already in the public domain when the patent was issued (ref G). Post is not aware at this time of any imminent additional compulsory licensing actions by the GoB.

----- Legislation -----

136. (SBU) While the GOB has yet to take steps to adopt the WIPO Copyright Treaty (WCT) or the WIPO Performers and Phonograms Treaty (WPPT), industry groups and GOB agencies continue to seek to strengthen existing IP legislation. During a December meeting of industry representatives with A/S Dan Sullivan, a representative of the Federation of Industries of the State of Sao Paulo (FIESP) noted in particular the need to increase criminal penalties for trademark counterfeiting (ref tel F).

137. (SBU) Legislation introduced in 1999 that would have stiffened the criminal penalties for piracy remains stalled in the Brazilian legislature and does not appear to have a significant chance of passage. A GoB official recently told EconOff that alternative CNCP-sponsored draft IP legislation is currently in the president's office for review, the last step before submission to the Brazilian congress. He said there is a significant backlog of legislative proposals at casa civil and he did not know if/when the legislation would move forward to the congress. (Comment: Such delays within the executive as well as once a proposal moves to congress are common in Brazil. End Comment.)

138. (SBU) This CNCP-sponsored legislation, developed by CNCP's Legislation Working Group with input from a 2005 private sector forum, proposes a number of changes to the country's penal code and industrial property law. Most suggested changes are practical in nature, such as providing a rights-holder with additional time for initiating legal proceedings; providing law enforcement agencies with the authority to seize maritime and aviation craft, in addition to buses, used to transport pirated goods; clarification of procedures for seizing and destroying goods, as well as enabling law enforcement agencies the ability to retain only samples for use in litigation; introducing differentiation in penalties between individual offenders (such as street vendors) and those involved in a larger operation; holding owners of media responsible for advertisements that promote buying, renting, exporting or importing goods produced in violation of IPR laws; incorporating penalties for software copyright violation into the penal code; and stiffening penalties if pirated goods are imported (ref J).

139. (SBU) In August 2007, new legislation (PL 1807/07) was introduced into the Brazilian Congress that would amend article 189 of Brazil's Industrial Property Law (9279/1996) and increase the penalties for trademark violations from three to twelve months to two to six years. The bill is currently in Constitution, Justice and Citizenship Committee of the Chamber of Deputies.

- Optical Disk Regulations

140. (SBU) Brazil does not have any regulations on optical media manufacturing for the purpose of controlling domestic production or any laws or regulations requiring the use of source identification (SID) codes in the mastering or replication of optical media. Post

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does not believe that the implementation of these regulations would

have a significant impact on the production or distribution of pirated optical goods since industry reports that there are approximately a dozen optical disc plants in Brazil and most of these plants appear to be operating legitimately and are not a significant source of pirated media. Most pirated media in Brazil appears in CD-R and DVD-R formats, which are usually smuggled in completed form directly from Paraguay. Blank optical disks usually originate in China and parts of Southeast Asia.

A View from Local Industry

¶41. (SBU) GoB reports of increased enforcement activity have done little to ease the concerns of Brazilian industry. At a December IPR-related meeting in Sao Paulo, representatives from recording, film, publishing, healthcare, and Sao Paulo state industry voiced concern about the growing number of intellectual property rights violations in the country (ref F). According to a representative of the recording industry, approximately 80% of Brazilian music sold is pirated.

Consumer Perception

¶42. (SBU) A U.S. Chamber of Commerce/Brazil-U.S. Business Council/ANGARDI (National Association to Guarantee Intellectual Rights) commissioned report noted that the GoB had intensified its efforts to combat piracy in 2007 and opined that these efforts demonstrated clearly that piracy continued to be a priority for the GoB. The report found that piracy costs the GoB over 20 billion Brazilian Reais (approx USD 11.38 billion) annually and called for more interest by the Brazilian judiciary in piracy issues.

¶43. (SBU) The report included data from polls conducted in October 2007 in Sao Paulo, Rio De Janeiro, Recife (Pernambuco state) and Belo Horizonte (Minas Gerais state) as a follow-up to a survey conducted in November 2006. Consumer spending on pirated goods in Belo Horizonte decreased 22 percent, in Recife it decreased 20 percent, and in Sao Paulo the decrease was 37 percent. Rio de Janeiro posted an increase of 19 percent. However, the poll found that spending on pirated goods in the tennis, clothing and toy sectors increased eight percent. (Note: In 2006, the poll noted a 17 percent growth overall in consolidated data on commercial piracy for the cities of Rio de Janeiro, Belo Horizonte and Sao Paulo along with a 45 percent increase in pirated items in the tennis, clothing and toy sectors. Individually, Sao Paulo showed a 14 percent reduction in the sale of pirated goods. End Note.) Consumers in all cities surveyed, except Recife, felt that anti-piracy enforcement efforts had increased. In Recife, consumers felt that it had decreased.

Future Plans

¶44. (SBU) According to GoB officials, the National Council to Combat Piracy (CNCPI) will meet in late February or early March to review its strategy to combat piracy and include increasing the organization's efforts to address consumer demand for counterfeit goods more effectively. To accomplish this, CNCPI plans to intensify its consumer educational program, increase efforts to promote reform of the Brazilian tax system, and encourage industry to lower prices on authentic products (ref G). ANVISA's future goals to combat counterfeit medicine include closer coordination with Mercosul partners, strengthening legislation, and implementing a more thorough drug registry database that would facilitate tracking counterfeit drugs to end users (ref G).

¶46. (SBU) Comment: As this report clearly shows, GoB efforts to combat piracy are involved and include a number of agencies and organizations. While the GoB still bristles at being included on the USTR watch list, the degree of GoB participation at the January OCR meeting with USTR is one indication of how the USG dialogue with GoB interlocutors has improved over the past year. ANVISA has shed its previous reluctance to interact with Mission and become more accessible. INPI now regularly interacts with USPTO and is

participating in USG sponsored training programs. The GoB still

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must address areas of concern including potential TRIPS violations in its use of undisclosed data and GoB-condoned copyright infringements at campus copy shops, but appears to be committed to a strong anti-piracy policy. End Comment.

Sobel